

Title 14 Board of Forestry and Fire Protection
[Notice circulated March 17, 2000]

15-DAY NOTICE
OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS
AND PUBLIC HEARING

Protection of Threatened and Impaired Watersheds, 2000

PUBLIC HEARING

Pursuant to the requirements of Government Code § 11346.8(c), and Title 1 of the California Code of Regulations § 44; the Board is providing notice of changes made to proposed regulations listed below which were the subject of a regulatory hearing March 14 and 15, 2000. These changes are being proposed in response to comments received regarding the proposed changes to the Forest Practice Rules. The Board will hold a public hearing to adopt final rule language. The public hearing is to be held at 1:00 P.M., on Tuesday, April 4, 2000 at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California.

The Board of Forestry and Fire Protection is providing notice of changes made to proposed regulations affecting Title 14 of the California Code of Regulations (14 CCR) Sections:

§ 895.1	Definitions
§ 898	Feasibility Alternatives
§ 898.2	Special Conditions Requiring Disapproval of Plans
§§ 914.8 [934.8, 954.8]	Tractor Road Watercourse Crossing
§§ 916 [936, 956]	Intent of Watercourse and Lake Protection
§§ 916.2 [936.2, 956.2]	Protection of the beneficial Uses of Water <u>and</u>
	Riparian Functions
§§ 923.3 [943.3, 963.3]	Watercourse Crossings
§§ 916.9 [936.9, 956.9]	Protection and Restoration in Watersheds with
	Threatened or Impaired Values
§§ 916.11 [936.11, 956.11]	Effectiveness and Implementation Monitoring
§§ 916.12 [936.12, 956.12]	Section 303(d) Listed Watersheds
§§ 923.9 [943.9, 963.9]	Roads and Landings in Watersheds with
	Threatened or Impaired Values

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in this notice. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements.

WRITTEN COMMENT PERIOD

Any person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the Board Office no later than 5:00 p.m. on Monday, April 3, 2000. After this date and time, to be considered, interested persons must present oral or written comments directly to the Board during the public hearing, noticed above. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

Submit written comments to:

Board of Forestry and Fire Protection
Attn: Dennis O. Hall
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Comments can also be delivered in person to the following address:

Board of Forestry and Fire Protection
Attn: Dennis O. Hall
Regulations Coordinator
1416 Ninth Street
Sacramento, CA 95814

Comments may be faxed to the Board's office using the following number:

(916) 653-0989

UPDATED INFORMATIVE DIGEST/ NON-CONTROLLING PLAIN ENGLISH SUMMARY

- Change made to **14 CCR § 895.1** Definitions

In order to clarify the Board's intent to move forward with further actions intended to address protection of listed aquatic species and watercourses listed as impaired pursuant to section 303(d) of the Clean Water Act on a watershed basis, the Board chose to establish a specific period of time that the adopted rules would be effective. This change is presented under subsection (a).

- Change made to **14 CCR § 898** Feasibility Alternatives

In order to clarify the Board's intent to move forward with further actions intended to address protection of listed aquatic species and watercourses listed as impaired pursuant to section 303(d) of the Clean Water Act on a watershed basis, the Board chose to establish a specific period of time that the adopted rules would be effective. This change is presented under subsection (a).

- Change made to **14 CCR § 898.2** Special Conditions Requiring Disapproval of Plans

In order to clarify the Board's intent to move forward with further actions intended to address protection of listed aquatic species and watercourses listed as impaired pursuant to section 303(d) of the Clean Water Act on a watershed basis, the Board chose to establish a specific period of time that the adopted rules would be effective. This change is presented under subsection (i).

- Change made to **14 CCR §§ 914.8 [934.8, 954.8]** Tractor Road Watercourse Crossing

In order to clarify the Board's intent to move forward with further actions intended to address protection of listed aquatic species and watercourses listed as impaired pursuant to section 303(d) of the Clean Water Act on a watershed basis, the Board chose to establish a specific period of time that the adopted rules would be effective. This change is presented under subsection (g).

- Change made to **14 CCR §§ 916 [936, 956]** Intent of Watercourse and Lake Protection

In order to clarify the Board's intent to move forward with further actions intended to address protection of listed aquatic species and watercourses listed as impaired pursuant to section 303(d) of the Clean Water Act on a watershed basis, the Board chose to establish a specific period of time that the adopted rules would be effective. This change is presented under subsection (e).

- Change made to **14 CCR §§ 916.2 [936.2, 956.2]** Protection of the beneficial Uses of Water and Riparian Functions

In order to clarify the Board's intent to move forward with further actions intended to address protection of listed aquatic species and watercourses listed as impaired pursuant to section 303(d) of the Clean Water Act on a watershed basis, the Board chose to establish a specific period of time that the adopted rules would be effective. This change is presented under subsection (d).

- Change made to **14 CCR §§ 916.9 [936.9, 956.9]** Protection and Restoration in Watersheds with Threatened or Impaired Values

In order to respond to comments that the definition of "Natural recovery" was neither clear nor enforceable, the Board chose not to adopt the definition. Therefore, in order to make subsection (a) consistent with the adopted language, the Board chose not to adopt the phrase " the natural recovery. "

In order to respond to comments that the terms "any," "no" and "no net" as used in various places in subsection (a) were neither enforceable nor attainable, the Board chose not to adopt these terms in those places specified in the 15-day notice. Subsequent to this change, the Board chose to adopt the term "any measurable" in order to provide attainable and enforceable goals under this new regulation.

In order to clarify that the proposed changes under 14 CCR §§ 916.9(a)(5), 936.9(a)(5) and 956.9(a)(5) were intended to meet the adopted requirements listed under 14 CCR §§ 916.9(i), 936.9(i), or 956.9(i) the Board chose to add the phrase "Consistent with the requirements of 14 CCR §§ 916.9(i), 936.9(i), or 956.9(i)." This change to the language clarifies that this section is to be consistent with other adopted sections pertaining to large woody debris recruitment.

In order to clarify that the proposed changes under 14 CCR §§ 916.9(a)(6), 936.9(a)(6) and 956.9(a)(6) were intended to meet the adopted requirements listed under 14 CCR §§ 916.9(g), 936.9(g), or 956.9(g) the Board chose to add the phrase "Consistent with the requirements of 14 CCR §§ 916.9(g), 936.9(g), or 956.9(g)." This change to the language clarifies that this section is to be consistent with other adopted sections pertaining to the protection of vegetative canopy for shade.

The Board received comments that changing the primary management objectives of timber operations in some areas may be in conflict with the intent of the Forest Practices Act. In order to respond to those comments that the Board's proposal to change the primary management objectives of timber operations adjacent to a watercourse from the maximum sustained production of high quality timber products to the protection, maintenance or restoration of the beneficial uses of water, the Board chose not to adopt the phrases "its primary" and "harvesting of wood products shall be secondary to those objectives." Additionally, in order to further address comments specific to subsection (c), the Board used the term "significant" to emphasize the need for the protection of the beneficial uses of water in these specific areas.

In response to comments that the necessity for establishing a special operating zone above Class II watercourses (as indicated under subsection (c)) has not been fully demonstrated at this time, the Board chose not to adopt the phrase "and above Class II WLPZs."

In order to respond to comments that the changes proposed under 14 CCR §§ 916.6, 936.6 and 956.6 could negate the role of CDF as lead agency in the timber harvest plan review process, the Board chose not to adopt the changes proposed for this section. In order to make subsection (j) consistent with the existing Forest Practice Rules, the Board chose to replace the word "one" with the word "two" as indicated in the notice.

In order to avoid any inconsistencies with the provisions of a Habitat Conservation Plan approved by state or federal agencies pursuant to the state or federal Endangered Species Acts for the protection of anadromous salmonid species, the Board chose to adopt clarifying language under subsection (x) specifying that those sections pertaining exclusively to watersheds with threatened or impaired values do not apply to a plan that is already subject to an incidental take permit based upon an approved Habitat Conservation Plan that addresses anadromous salmonid protection.

Additionally, in order to clarify the Board's intent to move forward with further actions intended to address protection of listed aquatic species and watercourses listed as impaired pursuant to section 303(d) of the Clean Water Act on a watershed basis, the Board chose to establish a specific period of time that the adopted rules would be effective. This change is presented under subsection (y).

Several sections have been renumbered to reflect the changes made at the hearing subsequent to the Board's adoption of specific sections of the proposed language.

- Change made to **14 CCR §§ 916.11 [936.11, 956.11]** Effectiveness and Implementation Monitoring

In order to clarify the Board's intent to move forward with further actions intended to address protection of listed aquatic species and watercourses listed as impaired pursuant to section 303(d) of the Clean Water Act on a watershed basis, the Board chose to establish a specific period of time that the adopted rules would be effective. This change is presented under subsection (a).

- Change made to **14 CCR §§ 916.12 [936.12, 956.12]** Section 303(d) Listed Watersheds

In order to clarify the Board's intent to move forward with further actions intended to address protection of listed aquatic species and watercourses listed as impaired pursuant to section 303(d) of the Clean Water Act on a watershed basis, the Board chose to establish a specific period of time that the adopted rules would be effective. This change is presented under subsection (f).

- Change made to **14 CCR §§ 923.3 [943.3, 963.3]** Watercourse Crossings

In order to clarify the Board's intent to move forward with further actions intended to address protection of listed aquatic species and watercourses listed as impaired pursuant to section 303(d) of the Clean Water Act on a watershed basis, the Board chose to establish a specific period of time that the adopted rules would be effective. This change is presented under subsection (h).

- Change made to **14 CCR §§ 923.9 [943.9, 963.9]** Roads and Landings in Watersheds with Threatened or Impaired Values

The Board received comments indicating that landowners periodically enter into contracts or other agreements with federal agencies that specify prescriptive road construction standards. In order to avoid inconsistencies with those previously established agreements, the Board chose to add clarifying language to subsection (b). The Board added the phrase "Unless prohibited by existing contracts with the U.S.D.A. Forest Service or other federal agency"

In order to avoid any inconsistencies with the provisions of a Habitat Conservation Plan approved by state or federal agencies pursuant to the state or federal Endangered Species Acts for the protection of anadromous salmonid species, the Board chose to adopt clarifying language under subsection (f) specifying that those sections pertaining exclusively to watersheds with threatened or impaired values do not apply to a plan that is already subject to an incidental take permit based upon an approved Habitat Conservation Plan that addresses anadromous salmonid protection.

Additionally, in order to clarify the Board's intent to move forward with further actions intended to address protection of listed aquatic species and watercourses listed as impaired pursuant to section 303(d) of the Clean Water Act on a watershed basis, the Board chose to establish a specific period of time that the adopted rules would be effective. This change is presented under subsection (g).

There have been no other changes in the laws pertaining to the proposed action, or to the effect of the proposed regulations from the laws and effects described in the previous *Notice of Proposed Rulemaking*.

CONTACT PERSON

Questions about the proposed action, copies of the proposed text of the regulations, the initial statement of reasons, and modified text of regulations, may be directed to:

Board of Forestry and Fire Protection
Attn: Dennis O. Hall
Regulations Coordinator
P.O. Box 944246

Sacramento, CA 94244-2460
Telephone: (916) 653-9418 or,
(916) 653-8007
Fax: (916) 653-0989

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

A copy of the express terms of the proposed regulation using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion is available on request. A copy of the express terms of the proposed regulation is also available on the Board of Forestry and Fire Protection web page: http://www.fire.ca.gov/bof/board/board_proposed_rule_packages.html.

Additionally, all the information considered as the basis for this proposed regulation (i.e., rulemaking file) is available for public reading/perusal at the Board's office listed above.

TEXT OF MODIFIED REGULATIONS

In order to clearly indicate those sections proposed for change in this 15-day notice, the text is presented in the following format:

Single spacing represents the full rule text as it has been adopted by the Board. This is for reference and readability only.

The modified sections are shown double-spaced. The proposed changes are located in the areas that have been **HIGHLIGHTED**.

The Board has illustrated changes to the original text in the following manner:

- language originally proposed is UNDERLINED
- deletions to existing language is shown with ~~STRIKETHROUGH~~
- deletions from the language originally proposed is shown with ~~UNDERLINE AND STRIKETHROUGH~~
- additions to the originally proposed language is DOUBLE-UNDERLINED

Dennis O. Hall
Regulations Coordinator
Board of Forestry and Fire Protection